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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

INDYWAY INVESTMENT, Plaintiff and Appellant, v. DENNIS COOPER and COUNTY OF LOS ANGELES, Defendants and Respondents.	B192944 (Los Angeles County Super. Ct. No. NC035452)

APPEAL from a judgment of the Superior Court of Los Angeles County, Judith Vander Lans, Judge. Motion to dismiss appeal denied.

Artiano, Guzman, James Artiano, Grace Lou and Eric Nakasu for Plaintiff and Appellant.

Berger Kahn, Ryan K. Hirota and James F. Henshall, Jr. for Defendant and Respondent, Dennis Cooper.

No appearance for Defendant and Respondent, County of Los Angeles.

Appellant Indyway Investment ("Indyway") is a trust. Indyway was represented by counsel at trial, but its notice of appeal was filed by "Deron Brunson, Trustee," in propria persona. Respondent Dennis Cooper has moved to dismiss the appeal, on the basis that, since a trust cannot appear in propria persona, the notice of appeal is void. We conclude that the notice of appeal is not void, and therefore deny the motion to dismiss.

FACTUAL AND PROCEDURAL BACKGROUND

Indyway owned some properties in the County of Los Angeles ("County"). The County sold the properties at a tax sale; Cooper was the purchaser. Indyway, represented by counsel, brought suit against Cooper and the County to cancel the tax deeds and quiet title to the properties. Alternatively, Indyway sought payment of the excess sale proceeds. Cooper cross-complained against Indyway to quiet title to the properties. After a bench trial, the trial court concluded the tax sale was proper and would not be set aside. On May 8, 2006, the trial court entered judgment quieting title to the properties in favor of Cooper, but ordering the County to pay Indyway the excess proceeds from the sale. Notice of entry of judgment was served on June 15, 2006. On July 6, 2006, Indyway filed a notice of appeal, but the notice of appeal was signed by its trustee, acting in propria persona, and not an attorney.

On November 13, 2006, Cooper filed a motion to dismiss the appeal. Cooper argued that the notice of appeal was a nullity, on the basis that no individual can

represent a trust in court except a licensed attorney.[1] On December 1, 2006, Indyway obtained counsel to pursue the appeal. Indyway's counsel filed a substitution on December 5, 2006, and filed an opposition to the motion to dismiss.[2] Cooper filed a reply and we set the motion for oral argument.

DISCUSSION

1. *A Nonattorney Trustee May Not Represent the Trust in Propria Persona*

Our analysis begins with the rule that a *corporation* may not appear in propria persona. While a natural person who is not an attorney may appear in propria persona, a corporation is not a natural person and "can neither practice law nor appear or act in person." (*Paradise v. Nowlin* (1948) 86 Cal.App.2d 897, 898.) In court, a corporation can act only through licensed attorneys. "A corporation cannot appear in court by an officer who is not an attorney." (*Ibid.*)

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[1] Cooper also argued the appeal should be dismissed as taken from a non-appealable order. On May 8, 2006, the trial court signed the judgment. A minute order issued, reflecting that the trial court had signed the judgment. The notice of appeal unambiguously states that Indyway is appealing from the judgment entered on May 8, 2006. However, when Brunson subsequently filed the case information statement on Indyway's behalf, he mistakenly attached the May 8 minute order, rather than the judgment itself, as the "judgment or order being appealed." Cooper has presented no authority suggesting that an appeal should be dismissed as having been taken from a non-appealable order simply because the wrong document was attached to the case information statement. We can see no reason to do so, given that the notice of appeal clearly states that the appeal is taken from the judgment.

[2] Cooper had mistakenly served its motion to dismiss on Indyway's trial counsel rather than Indyway itself. Under these circumstances, we accepted Indyway's late-filed opposition.

There are three policy reasons for this rule. First, if a corporate agent who is not an attorney acts on behalf of the corporation in court proceedings, that individual would be engaged in the unauthorized practice of law. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.) Attorneys are required to be licensed so that the public is protected from being advised and represented by unqualified individuals. (*Russell v. Dopp* (1995) 36 Cal.App.4th 765, 773.) Second, the rule furthers the efficient administration of justice by assuring that qualified professionals, who, as officers of the court are subject to its control and to professional rules of conduct, present the corporation's case and aid the court in the resolution of the issues. Third, the rule helps maintain the distinction between the corporation and its shareholders, officers, and directors. (*CLD Construction, Inc. v. City of San Ramon, supra*, 120 Cal.App.4th at p. 1146.)

The rule has been applied to other situations in which an individual seeks to appear in propria persona for a person or entity for whom the individual can otherwise act. Specifically, in *City of Downey v. Johnson* (1968) 263 Cal.App.2d 775, the court held that a conservator or executor could not appear "in his representative capacity 'in propria persona' in a judicial action or proceeding which is not an integral part of the proceedings within the jurisdiction of the probate court." (*Id*. at p. 778.) As in the situation regarding the in propria persona representation of a corporation, the court was concerned with the individual engaging in the unlicensed practice of law on behalf of another entity. (*Id*. at p. 779.)

In *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, we considered whether the same rule applies to a trustee purporting to act in propria persona on behalf of a trust. In contrast to a corporation, which is a distinct legal entity from its stockholders and officers, a trust is not an entity separate from its trustee, but simply a fiduciary relationship. (*Id*. at p. 548.) Nonetheless, if the trustee appears in propria persona for the trust, the trustee would be representing the interests of others – the trust beneficiaries – and therefore engaging in the unauthorized practice of law. (*Id*. at pp. 548-549.) Thus, we concluded that a nonattorney trustee could not represent the trust in court in propria persona. (*Id*. at p. 546.)

Indyway does not contest this conclusion; indeed, it has now obtained counsel to represent it on appeal. The issues raised by Cooper's motion to dismiss are whether Brunson was nonetheless permitted to file the notice of appeal on Indyway's behalf; and, if not, whether the appeal must be dismissed.

2. *A Nonattorney Trustee May File a Notice of Appeal on Behalf of the Trust*

We next consider whether a nonattorney trustee may file a notice of appeal on behalf of the trust without violating the prohibition against the unauthorized practice of law. California Rules of Court, former rule 1, now rule 8.100, provides, in pertinent part, that "[t]he appellant or the appellant's attorney must sign the notice [of appeal]." It also provides that "the notice of appeal must be liberally construed."

It is well established that the rule is "satisfied when *any person*, attorney or not, who is empowered to act on [the] appellant's behalf signs the notice." (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 853.) Indeed, "[i]n permitting either the appellant

or his attorney to sign the notice, the rule constitutes a liberalization and a distinct departure from the general rule that a party represented by counsel may not file papers in propria persona in the litigation." (*City of Downey v. Johnson, supra,* 263 Cal.App.2d at p. 781.) The courts therefore "draw a distinction between the capacity of a person acting in propria persona to sign and file a notice of appeal and his capacity to execute and file pleadings, papers, and briefs in both the trial and appellate courts." (*Id*. at pp. 780-781.)

Thus, even though one sibling cannot "act as an attorney for her siblings," she may execute and file the notice of appeal on behalf of her siblings as their agent. (*Ehret v. Ichioka* (1967) 247 Cal.App.2d 637, 641.) Likewise, although a conservator or executor may not appear for the estate in propria persona, the conservator or executor may file a notice of appeal on its behalf. (*City of Downey v. Johnson, supra,* 263 Cal.App.2d at p. 782.) To similar effect is *Rogers v. Municipal Court* (1988) 197 Cal.App.3d 1314, which concluded that a corporation, acting through its president, could file a notice of appeal of a Labor Commissioner's award in propria persona. The court concluded that the corporation was not prejudiced by its president's lack of legal expertise when the issue was simply the filing of a notice of appeal. (*Id*. at pp. 1318-1319.) "Also, it would be anomalous for us to conclude that it is in the general interest of the corporation to have an attorney as its representative, but then apply that rule to penalize the corporation in this instance for filing the notice of appeal without an attorney." (*Id*. at p. 1319.)

We conclude that the same analysis should apply to a trustee acting on behalf of a trust. The trust itself, as appellant, is permitted to sign and file a notice of appeal. The only way in which the trust can perform this act is if its trustee may do so. The filing of the notice of appeal does not constitute the trustee's unauthorized practice of law on behalf of the beneficiaries, but is simply an act of the trust itself, authorized by the Rules of Court.[3]

3. *Assuming the Notice of Appeal Was Improperly Filed, Dismissal Would Not Result*

In any event, assuming that the notice of appeal was improperly filed, dismissal does not necessarily follow. We must consider the proper remedy to be taken when a court discovers an individual is, in a representative capacity, improperly attempting to act in propria persona.

In 1948, the court in *Paradise v. Nowlin, supra,* 86 Cal.App.2d at p. 898, dismissed an appeal on its own motion when it discovered a corporation had filed its notice of appeal in propria persona. Since that time, however, the response of the courts has been much more lenient, allowing the party an opportunity to obtain counsel. In 1983, the Appellate Department of the Superior Court of San Diego County concluded, "When a corporation seeks to appear without the benefit of counsel . . . , it is the duty of

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[3] We recognize that *Paradise v. Nowlin, supra,* 86 Cal.App.2d 897, reached a different conclusion, holding that a notice of appeal filed in propria persona on behalf of a corporation was void and dismissing the appeal. The case did not, however, consider California Rules of Court, former rule 1, or whether the filing of a notice of appeal necessarily constituted the practice of law.

the trial court to advise the representative of the corporation of the necessity to be represented by a licensed lawyer." (*Van Gundy v. Camelot Resorts, Inc.* (1983) 152 Cal.App.3d Supp. 29, 31-32.) In 1998, we upheld a trial court's order informing a trustee that he had to obtain counsel to represent the trust within thirty days or face dismissal. (*Ziegler v. Nickel, supra,* 64 Cal.App.4th at p. 547, 549.) In 2001, Division Three of the Fourth Appellate District had before it an appeal by a corporation which had proceeded in propria persona during the bulk of the proceedings before the trial court and through the filing of its opening brief on appeal. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1282, 1284, fn. 5.) The court noted the trial court had failed in its duty to advise the corporation of the necessity of obtaining counsel to represent it. (*Id*. at p. 1284, fn. 5.) The appellate court itself informed the corporation that its appeal would be dismissed unless it obtained counsel; the corporation obtained counsel and the appeal proceeded on its merits. (*Id*. at p. 1282.) Finally, in 2004, Division Five of the First Appellate District questioned the continuing validity of *Paradise*'s absolute bar, and concluded "it is more appropriate and just to treat a corporation's failure to be represented by an attorney as a defect that may be corrected, on such terms as are just in the sound discretion of the court." (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1149.)

We agree with the recent authority. In this case, as soon as Cooper moved to dismiss Indyway's appeal on the basis that Indyway could not proceed in propria persona, Indyway obtained counsel. While we conclude that Indyway's notice of appeal was valid, we acknowledge that Indyway resolved any problems with its representation

by obtaining an attorney within a reasonable time. We therefore deny the motion to dismiss the appeal.

DISPOSITION

The motion to dismiss the appeal is denied.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.